

**Amendments to the Drawings:**

A new sheet, containing Figure 4, showing the headphones is enclosed herewith.

**REMARKS/ARGUMENTS**

**Drawing Objections**

The Examiner objected to the drawings under 37 CFR §1.83(a). The examiner requests that the drawings be amended to show representation of the headphones or have the headphones canceled from the claims. A new drawing sheet has been attached to include representation of the headphones.

**Claim Objections:**

Claim 7 was objected to because “din” should be “in.” Claim 7 has been canceled.

**Claim Rejections Under 35 U.S.C. § 102**

The Examiner rejected claim 7 under 35 U.S.C. § 102(b) as being anticipated by U.S. Patent No. 5,815,582 to Claybaugh et al (“Claybaugh”). Claim 7 has been canceled.

The Examiner rejected claims 1-3, 7, and 8 under 35 U.S.C. §102(e) as being anticipated by U.S. Patent No. 6,278,786 to McIntosh (“McIntosh”). Claims 7 and 8 have been canceled. With respect to claim 1, McIntosh does not disclose all of the elements of amended claim 1. In particular, McIntosh does not disclose “the noise cancellation circuit being operative over a predetermined phase range of noise cancellation input signal,” nor does McIntosh disclose “at least one headphone of the plurality of headphones having a different acoustic property from the other headphone(s),” nor does McIntosh disclose “the passive filter for the at least one headphone is configured to modify the output of the sound transducer to provide a noise cancellation input signal which is within the predetermined phase range,” all as recited in claim 1. McIntosh also does not disclose “each headphone being individually electrically connectable to the noise cancellation circuit so that the output of the passive filter or the output of the sound

transducer is provided to the noise cancellation input.” The arguments with respect to claim 1 apply equally to claims 2 and 3.

### **Claim Rejections Under 35 U.S.C. § 103**

The Examiner rejected claims 4 and 5 under 35 U.S.C. §103(a) as being unpatentable over McIntosh.

#### **Claim 4**

**Prima facie case of obviousness not established**--Through the decisions of the CCPA and the Court of Appeals for the Federal Circuit, certain well-established principles of claim construction and review have been developed. If these principles are not met, a prima facie case of obviousness under 35 U.S.C. § 103 has not been established and the claim in issue should be allowed. The undersigned respectfully suggests that these tests are not met by the prior art in this case and a prima facie case of obviousness has not been established. These tests will be briefly applied to the individual claims rejected by the proposed combination.

**All claim limitations must be considered**--35 U.S.C. § 103 requires that the subject matter as a whole be reviewed. There are certain limitations of claims 4 and 5 which are still not shown in the combination proposed by the Examiner. For example, McIntosh does not disclose “the noise cancellation circuit being operative over a predetermined phase range of noise cancellation input signal,” nor does McIntosh disclose “at least one headphone of the plurality of headphones having a different acoustic property from the other headphone(s),” nor does

McIntosh disclose “the passive filter for the at least one headphone is configured to modify the output of the sound transducer to provide a noise cancellation input signal which is within the predetermined phase range.” According to 35 U.S.C. § 103, it must be considered and given proper weight if the correct result is to be reached.

The Examiner rejected claim 6 under 35 U.S.C. §103(a) as being unpatentable over McIntosh in view of Claybaugh. The argument with respect to claim 1 is equally applicable to claim 6 and is herein incorporated by reference.

**CONCLUSION**

Applicant now believes that this amendment complies with 37 CFR § 1.121 and thus requests examination of this Amendment. Applicant respectfully requests that a timely Notice of Allowance be issued in this case.

Respectfully submitted,

**BROUSE MCDOWELL**

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Date

Telephone No.: (330) 535-5711  
Fax No.: (330) 253-8601



Daniel A. Thomson, Esq.  
Reg. No. 43,189  
Customer# 26781